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June 3, 2004

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street S.W. Suite TW-A325
Washington, D.C. 20554

Re: CG Docket No. 02-386 - In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers; NPRM 04-50.

Dear Ms. Dortch:

Pursuant to the Commission's March 10, 2004 Notice of Proposed Rulemaking (FCC 04-50), please find enclosed the Comments of New York State Attorney General Eliot Spitzer.

Sincerely,

Keith H. Gordon

Keith H. Gordon
Assistant Attorney General

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List ABCDE

cc: Natek, Inc., 236 Massachusetts Ave., N.E., Suite 110, Washington, D.C. 20002
Kelli Farmer, FCC, Room 4-C740, 445 12th St., S.W. Washington, D.C. 20554 (4 copies)

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Rules and Regulations Implementing	)	CG Docket No. 02-386
Minimum Customer Account Record	)	
Exchange Obligations on All Local and	)	
Long Distance Carriers	)	

COMMENTS OF
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June 3, 2004

I. INTRODUCTION

The Federal Communications Commission ("Commission") has issued a *Notice of Proposed Rulemaking* ("*Notice*")[1] seeking comment on whether the Commission should impose mandatory minimum Customer Account Record Exchange ("CARE") obligations on all local exchange carriers ("LECs"), including incumbents ("ILECs") and competitors ("CLECs"), as well as interexchange carriers ("IXCs").

The New York Office of the Attorney General ("NYOAG") supports the mandatory minimum CARE obligations for IXCs and LECs proposed in the Notice to ensure that all affected carriers are notified when a customer changes long distance service and further recommends similar inter-carrier data exchange procedures be required when a customer cancels long distance service without selecting a new IXC.

After the 1984 AT&T break-up, LECs coordinated the exchange of customer data between themselves and the various IXCs. In recent years, as competition for local service has prospered, this data exchange has become more complex and, consequently, this data is no longer exchanged in a consistent and reliable manner.

In addition to the increase in competition for local service, alternative means of making toll calls have proliferated, resulting in growing numbers of customers not presubscribing to any IXC, choosing instead, to make their toll calls on wireless phones, using voice over Internet protocol phone services or 1010 dial-around services. Most customers who notify their IXC to cancel service, however, are unaware that the IXC may continue to treat them as a customer until the LEC changes the presubscribed interexchange carrier code ("PIC") (to another IXC or to no

[1] FCC 04-50 (released March 25, 2004), 69 FR 20845 (April 19, 2004).

IXC).

As a result, consumers are increasingly experiencing difficulties when dropping or changing service providers. Unless all LECs and IXCs cooperate in exchanging data whenever customers change carriers, confusion, erroneous bills, and inconvenience for all parties will continue to result.

To alleviate these problems, the NYOAG recommends that the Commission adopt two requirements for sharing certain information among carriers:

1. IXCs should be required to notify the local service carrier when informed by customers that they want to cancel IXC service.
2. LECs should be required to notify the presubscribed IXC whenever a customer switches IXCs in conjunction with switching local service.

II. INADEQUATE INFORMATION-SHARING AMONG CARRIERS IS A MAJOR SOURCE OF CONSUMER BILLING ERROR COMPLAINTS.

The failure of telecommunications carriers to exchange data uniformly or to act on data received in a timely manner has resulted in a significant number of customer complaints for carriers and regulators across the nation.[2] For example, between January 2004 and May 2004, more than 500 residential consumers complained to the NYOAG about erroneous bills from

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[2] The New York State Public Service Commission and New York State Consumer Protection Board received numerous complaints from "consumers who received bills in the past few months from AT&T even though they were not customers of AT&T," Poughkeepsie Journal, *Business Briefs: Complaints about AT&T Billing Received,* February 28, 2004; Verizon spokesman Cliff Lee stated that the ILEC "which competes with AT&T for local and long-distance business, has received more than 1,000 calls from its customers in upstate New York and New England about the [erroneous] AT&T bills since the beginning of the year," Fred O. Williams, *Billing Error is Seen as Back-Door Sales Pitch*, Buffalo News, March 6, 2004; AT&T told Tennessee Regulatory Authority officials "the [billing] mistake impacted former AT&T customers who use Bell South, which in many cases passes along long-distance charges on their billing statements," Associated Press State and Local Wire, *AT&T 'billing error' Overcharges Thousands in Tennessee,* March 6, 2004.

AT&T, of which many were assigned another IXC's PIC.[3]

In numerous instances, when a customer chooses a new IXC, the PIC may be changed at the LEC, but this information is not transmitted by the consumer's LEC to the his or her former IXC. When consumers complain about erroneous bills, the various carriers may blame each other instead of resolving data coordination failures.[4] In addition, this lack of coordination between carriers often results in customers receiving two bills – one from the new carrier and another from the former presubscribed IXC, causing considerable customer confusion and frustration with their carriers.[5]

In still other cases, when the consumer calls his or her IXC to cancel service, no change in the PIC is communicated to the LEC, and the IXC continues to consider the consumer its customer, because no notice of a PIC change was received by the IXC from the LEC. IXCs do not provide consumers written notice of their need to notify the LEC if they wish to cancel the PIC without selecting a replacement IXC. The consumer may discover that the IXC still considers him or her a customer many months or even years later, because the IXC has decided to begin billing all customers a minimum monthly charge even if no calls are made.[6]

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[3] Of 147 complaints analyzed by the NYOAG, 61 had other IXCs as their PIC, while 86 had AT&T but were not aware of this fact. Additionally, the New York State Public Service Commission received 262 consumer complaints about AT&T's billing errors between March 1 and April 5, 2004. News release, *PSC Chairman Flynn Announces New AT&T Commitment to Fix Remaining Bill Problems*, issued May 4, 2004.

[4] Verizon "said AT&T improperly tried to blame it for the bad bills by saying Verizon was not informing it promptly when AT&T customers switched to Verizon." *See also* Joel Stashenko, *AT&T Billing Draws Complaints; Consumers Say they are Not Customers of Phone Company but were Charged Anyway*, Albany Times Union, February 28, 2004.

[5] AT&T recently acknowledged that "up to 800,000 non-AT&T customers nationwide" were billed in error because its customer database mistakenly included consumers who were presubscribed to another IXC "for years." Syracuse New York *Post-Standard: AT&T Told Not to Collect New Fee*, April 29, 2004.

[6] For example, as reported by the Associated Press, Patricia Burrows "doesn't have a long-distance carrier so she didn't understand why a $4 AT&T charge showed up on her local phone bill." Brian Bakst, *State AG Says AT&T Overcharged Thousands of Customers*, Associated Press St. Paul, MN, May 6, 2004; AT&T mistakenly billed

Similar problems across the nation prompted the Minnesota and Florida Attorneys General to file lawsuits against AT&T accusing the company of wrongfully billing customers for unsolicited services.[7] Hundreds of thousands of consumers received erroneous bills from AT&T because either AT&T was not notified of the consumer's earlier switch to a new IXC, or the consumer had notified AT&T to cancel the service but notice was not given to the appropriate LEC. A uniform standard that would require all carriers to send a notice of line loss to other affected providers would likely have prevented this situation.

III. THE COMMISSION SHOULD REQUIRE ALL CARRIERS TO NOTIFY OTHER AFFECTED CARRIERS WHENEVER A CONSUMER CHANGES STATUS.

A uniform national standard is needed. The National Association of Regulatory Utility Commissioners ("NARUC") adopted a resolution on February 26, 2003 encouraging the Commission "to develop mandatory minimum requirements relative to the exchange of customer account information between IXCs, LECs and CLECs…."[8]

Customers and telecommunication carriers alike would benefit from mandatory uniform CARE standards. Uniform standards would prevent LECs and IXCs from being unaware that a customer remains on their networks, has switched local or long distance companies or has made changes to their billing information. All carriers' databases would contain current and accurate information preventing costly billing errors for carriers and serious inconvenience for consumers.

"former AT&T customers." Associated Press State and Local Wire, *AT&T 'billing error' Overcharges Thousands in Tennessee*, March 6, 2004.

[7] *See* "*AG Crist Files Suit Against AT&T*," TR State Newswire (May 5, 2004); Brian Bakst, *State AG Says AT&T Overcharged Thousands of Customers*, Associated Press St. Paul, MN, May 6, 2004; Jason Gertzen, "*AT&T Improperly Charges 12,000 State Residents*," Milwaukee Journal Sentinel (May 13, 2004) at 1D.

[8] *NARUC Board of Directors Resolution Urging the FCC to Initiate a Rulemaking to Establish Mandatory Minimum Requirements Relative to the Exchange of Customer Account Information between Inter-Exchange Carriers, LECs and CLECs*, adopted February 26, 2003, http://www.naruc.org/associations/1773/files/requirements.pdf.

Customer confusion would also be alleviated by mandatory uniform standards applicable to cancellation of IXC service. Currently, customers who want to drop their IXC must contact their LEC as well as the IXC. Only the local carrier can make the necessary changes to a customer's account and database. The old IXC is not permitted to notify the LEC to change the customer's PIC.[9]

Consumers reasonably believe, however, that telling their IXC to cancel the service will terminate their contractual relationship and are not aware of the additional requirement that the local carrier be notified. The practice of continuing to treat a person as a customer despite notice of cancellation conflicts with traditional contract law principles.[10]

V. CONCLUSION

In the Notice, the Commission stated that, "As a general matter, we believe that a uniform process observed by all regulated entities – competitive LECs, incumbent LECs, and interexchange carriers alike – could also provide a better framework for fair and consistent enforcement activity by the Commission."[11] The NYOAG's proposed changes to the CARE rules would provide fair, consistent and efficient federal as well as state enforcement of the governing rules and also reduce consumer confusion.[12] In addition, the proposal "could eliminate a significant percentage of consumer complaints concerning billing errors,"[13] providing relief to

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[9] 47 C.F.R. § 64.1100 *et seq.*

[10] *E.g.*, the *Uniform Commercial Code* provides that a contract is terminated "when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for breach. On 'Termination' all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives." NY UCC § 2-106(3).

[11] Notice at ¶ 10.

[12] *See Ibid* at ¶ 23.

[13] *Ibid* at ¶ 9.

consumers and conserving limited governmental and carrier resources expended needlessly in responding to complaints generated by inadequate data coordination between carriers.

In addition to proposed modifications designed to make the CARE rules more effective at getting full cooperation and coordination between LECs and IXCs, the process should be updated to make it more responsive to consumer needs as well as carrier needs. Given the current range of calling options used by consumers, it is no longer reasonable to assume that all customers will need, use or even want to have a presubscribed IXC, especially as more IXCs charge monthly fees whether or not any long distance calls are made.

June 3, 2004

Respectfully submitted,

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